



Security Council

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REPORT OF THE SECRETARY-GENERAL ON THE SITUATION
CONCERNING WESTERN SAHARA

1. In a status report submitted to the Security Council on 21 May 1993 (S/25818), I had informed the Council of my decision to visit the mission area in the first week of June, in pursuance of paragraph 2 of resolution 809 (1993), which called for an intensification of efforts in order to resolve outstanding issues, particularly those relating to the interpretation and application of the criteria for voter eligibility.

2. I visited the mission area from 31 May to 4 June 1993, accompanied by my Special Representative, Sahabzada Yaqub-Khan. The present document contains a report on my mission and on further efforts in pursuance of resolution 809 (1993).

3. At Rabat I was received by His Majesty King Hassan II of Morocco. I also held meetings with the Prime Minister, Mr. Mohamed Karim Lamrani, the Minister of State, Mr. Moulay Ahmed Alaoui, the Minister of State for Foreign Affairs and Cooperation, Mr. Abdellatif Filali, and the Minister of the Interior and Information, Mr. Driss Basri, and other senior officials. In the area of Tindouf I met with the Secretary-General of the Frente Popular Front for the Liberation of Saguia el-Hamra and Rio de Oro (POLISARIO), Mr. Mohammed Abdelaziz. Senior Frente POLISARIO officials were also present. At Algiers I was received by the President of the Haut Comité d'Etat, Mr. Ali Kafi. Meetings were also held with the Head of Government, Mr. Belaid Abdeslam, and other members of the Haut Comité d'Etat, Mr. Redha Malek, Minister for Foreign Affairs, and General Khaled Nazzar, Minister of Defence. While on a subsequent mission at Vienna from 10 to 17 June, I held further consultations with the Permanent Representative of Morocco to the United Nations, Mr. Ahmed Snoussi, the POLISARIO Coordinator with the United Nations Mission for the Referendum in Western Sahara (MINURSO), Mr. Mustafa Bachir Sayed, and the Foreign Minister of Algeria, as well as the Permanent Representative of Mauritania to the United Nations, Mr. Mohamedou Ould Mohamed Mahmoud.

4. Additionally, the current Chairman and the Secretary-General of the Organization of African Unity (OAU) were kept regularly informed of ongoing efforts in pursuance of Security Council resolution 809 (1993). Other senior government officials from States members of the Security Council were briefed by me on the Western Sahara question during my visits to Paris and Vienna.

5. The aim of my visit to the mission area was to urge the parties to accept a compromise solution with regard to the interpretation and application of the criteria for voter eligibility. To this effect I presented to the parties a comprehensive text (see annex I) based on talks with the parties in August and September 1992 and on their comments regarding the outline of a possible compromise which my Special Representative had proposed during a visit to the mission area in March 1993. I invited the parties to convey to me as early as possible their views regarding the acceptability of my compromise proposals, to enable me to submit recommendations to the Security Council in a full report in pursuance of resolution 809 (1993).

6. To follow up my discussions with the authorities concerned, my Special Representative held another round of meetings in the mission area from 5 to 20 June 1993. During these and subsequent consultations, both parties reaffirmed their commitment to the implementation of the peace plan in its entirety and their determination to move towards an early referendum. Both parties stressed that they did not reject the proposed compromise but expressed reservations on certain provisions of the text. Reservations expressed by the authorities at Rabat centred on specific provisions concerning tribal links with the Territory which, in their view, were unduly restrictive. In spite of these concerns, Morocco has since acquiesced in the compromise in its present form.

7. For its part the Frente POLISARIO conveyed to the Special Representative its acceptance of all the criteria for voter eligibility enunciated by my predecessor in the annex to his report of 19 December 1991 (S/23299), thus signifying a favourable change in the earlier position of the Frente POLISARIO which had consistently objected to several of these criteria. With regard to the proposed compromise on the interpretation and application of the criteria for voter eligibility, the Frente POLISARIO also conveyed its acceptance of oral testimony in support of individual applications for participation in the referendum, which indicates another favourable change in its earlier position. However, in expressing substantial reservations on the compromise, the POLISARIO authorities proposed several amendments to the text. Their reservations and proposed amendments concern primarily provisions relating to tribal links with the Territory and to the composition of the tribal chiefs (shiukhs) invited to testify, which they consider unduly permissive.

8. As is well known, we have consistently sought to encourage direct talks between the parties as a way of facilitating the implementation of the peace plan. It was therefore gratifying to learn that, shortly after my visit to the mission area, both parties finally agreed to initiate direct talks in mid-July at Laayoune and to ask for the assistance of the United Nations in holding this meeting. Notwithstanding difficulties in the preparation and organization of the talks and other problems, mostly of a procedural nature, the delegations of Morocco and the Frente POLISARIO met from 17 to 19 July 1993 at Laayoune, in the presence of my Special Representative as United Nations observer. While it would have been unrealistic to expect a major breakthrough on substantial issues - nor was this the primary aim of the talks - it was an encouraging sign that this exploratory dialogue was held in a positive spirit, marked by restraint and mutual respect. Neither party has excluded the possibility of resuming the talks for wider discussions on issues of mutual concern. It is my earnest hope that such talks will soon be resumed as a follow-up to the Laayoune initiative.

9. In paragraph 3 of its resolution 809 (1993), the Security Council further asked for preparations for the holding of the referendum and urged that voter registration commence promptly, starting with the updated lists of persons included in the 1974 census. Pursuant to this request, Mr. Erik Jensen was appointed Chairman of the Identification Commission in May 1993 and immediately travelled to Rabat, Laayoune, Tindouf, Algiers and Nouakchott with a view to initiating the process of identification and registration of voters. He also assembled the members of the Commission and a team of registration officers. The former group arrived in Laayoune in June. On the basis of the mandate (see annex II) promulgated on 26 April 1993 in conformity with the relevant provisions of the settlement plan and article 11 of the general regulations of 8 November 1991 (see annex III), the Identification Commission began work on establishing with the authorities of both parties the detailed procedures for identification and registration, starting in the Laayoune and Tindouf areas.

10. Proposals regarding specific measures to initiate the above process were at first agreed, but reservations expressed subsequently made it necessary to modify certain aspects. Further discussions, which were facilitated by the presence of both parties at the direct talks in Laayoune, have since led to revised proposals for the organization of work, which should now make it possible for the actual identification and registration of potential voters to start. Meanwhile, the complicated but essential practical and logistical arrangements have been proceeding, registration materials are being prepared and most of the specialized technical equipment is expected to arrive shortly. One Identification Commission team has been deployed to Tindouf to begin preliminary work in that area.

11. The Police Commissioner, Colonel Jürgen Friedrich Reimann (Germany), who assumed his functions in May 1993 as Head of the Security Unit of MINURSO, arrived in the mission area, with a small contingent of 19 civilian police officers from Belgium (5), Germany (4), Malaysia (5) and Togo (5). This first contingent will accompany the registration teams to provide security and order at the various sites for registering voters.

12. The above report outlines factual developments related to my visit to the mission area and events that followed it. The intensification of efforts to overcome existing difficulties has contributed to the holding of direct talks between the parties which, if sustained, will hopefully facilitate the implementation of the settlement plan. The progress towards the registration of voters, which is gathering momentum, is another concrete step. The exchange of views has sharpened focus on outstanding issues. Foremost among these is the urgency of the acceptance of the compromise on the interpretation and application of the eligibility criteria.

13. I intend to submit in due course a full report to the Security Council in pursuance of resolution 809 (1993).

Annex I

[Original: French]

Interpretation and application of the criteria and procedures
for establishing identity annexed to the report of the
Secretary-General of 19 December 1991 (S/23299)

COMPROMISE PUT FORWARD TO THE TWO PARTIES
BY THE SECRETARY-GENERAL

1. In accordance with paragraph 58 of document S/21360 and paragraph 9 of document S/22464, as well as regulations 5 to 26 of the General Regulations for the Organization and Conduct of the Referendum in Western Sahara (hereinafter referred to as the "General Regulations"), issued by the Secretary-General on 8 November 1991, the following comprises the interpretation of the criteria and procedures for establishing identity as well as the eligibility of Saharans to participate in the referendum set forth in the annex to the report of the Secretary-General of 19 December 1991 (S/23299).

I. CRITERIA FOR ELIGIBILITY TO PARTICIPATE IN THE REFERENDUM

2. The criteria for eligibility to participate in the referendum on self-determination for the people of Western Sahara can be grouped in the following five categories:

1. Persons whose names are included in the revised 1974 census list (S/23299, para. 23);

2. Persons who were living in the Territory as members of a Saharan tribe at the time of the 1974 census but who could not be counted (ibid., para. 25);

3. Members of the immediate family of the first two groups (father, mother and children) (ibid., paras. 23 and 26);

4. Persons born of a Saharan father born in the Territory (ibid., para. 29);

5. Persons who are members of a Saharan tribe belonging to the Territory and who have resided in the Territory for six consecutive years or intermittently for 12 years prior to 1 December 1974 (ibid., paras. 30 and 31).

3. Any Saharan meeting any of the above criteria must be 18 years of age or over on the closing date for inclusion in the voters list, which date shall be established by the Special Representative in accordance with regulation 13 of the General Regulations.

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First criterion

4. The persons covered under the first criterion are those whose names appear on the 1974 Western Sahara census list as revised by the Identification Commission on the basis of information provided by the two parties in accordance with the provisions of paragraph 21 of document S/22464. The Commission revised the 1974 list by removing the names of persons deceased since that date.

Second criterion

5. Persons referred to under the second criterion must prove (a) that they are members of a Saharan subfraction included in the 1974 census and (b) that they resided in the Territory at the time of the census.

6. In view of the nomadic nature of Saharan society it will suffice for the person concerned, having satisfied the conditions in (a), to prove in accordance with (b) that his principal area of residence was in Western Sahara at the time of the census.

Third criterion

7. Persons covered under the third criterion must prove their close relationship - as father, mother or child - with Saharans whose eligibility to participate in the referendum has been established on the basis of the first or second criterion. In the case of a child, he or she must prove his or her relationship with the father or mother whose eligibility to vote has been established on the basis of the first or second criterion.

Fourth criterion

8. Those persons who are not covered by any of the three preceding criteria can apply to participate in the referendum in accordance with the fourth criterion. (This thus covers Saharans who (a) were not present in the Territory at the time of the 1974 census, (b) cannot produce supporting evidence to prove that they were present at the time of the census, (c) have no close relationship with persons eligible to participate in the referendum on the basis of the first or second criterion, or (d) cannot produce supporting evidence establishing such a relationship.)

9. The applicant must prove that his father is (a) a member of a Saharan subfraction included in the 1974 census and (b) was born in the Territory within its currently recognized international borders. If the father meets these two conditions the person concerned must prove his relationship with the father.

10. The mother and father of the applicant must apply individually to participate in the referendum in accordance with any of the criteria for eligibility. This also applies, where appropriate, to preceding generations.

11. Descendants of the applicant born outside the Territory are not eligible to participate in the referendum under the fourth criterion.

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Fifth criterion

12. Persons who cannot meet any of the first four criteria may apply to participate in the referendum under the fifth criterion. These persons must prove (a) that they are members of a Saharan subfraction included in the 1974 census (b) who have resided in the Territory, within its currently recognized international borders, for 6 consecutive years or intermittently for 12 years prior to 1 December 1974.

13. Taking into account the provisions of the second criterion, those Saharans who resided in the Territory before the 1974 census may apply to participate in the referendum under the fifth criterion. The applicant, having met the conditions specified in (a), will need to demonstrate, pursuant to (b), that his principal area of residence was in Western Sahara over the requisite period (that is 6 consecutive years or intermittently for 12 years), before the census.

II. SUPPORTING EVIDENCE

14. Paragraph 32 of the annex to document S/23299 states: "The process of identification of people eligible to participate in the referendum will involve a number of proofs that applicants will have to provide in support of their claim. Official documents, well known to the Saharans and used by them, will help the Commission in making its assessment. In addition, the Commission will take into consideration the fact that in the Saharan society, oral testimonies play an important part in all social activities. Those testimonies, given under appropriate conditions, will also assist the Commission in judging the merits of individual applications."

15. Taking into account these considerations, any person applying to participate in the referendum must submit official documents to the Identification Commission in order to enable the Commission to establish his identity in accordance with the first criterion, or his identity and eligibility to vote in accordance with any of the second to fifth criteria. In that the factors and circumstances connecting the applicant to the Territory must in general precede 1 December 1974, the official documents which the applicant must submit are those issued by the former Spanish Territorial authorities, apart from in the cases provided for in paragraphs 16 and 17 below.

16. Exceptionally, where an applicant does not possess the above documents or has incomplete or inadequate documents, the Identification Commission may determine eligibility to vote taking into account testimony by tribal chiefs (sheikhs) in accordance with the provisions of paragraphs 20 to 23 below. At the request of the applicant the sheikhs may rely where appropriate on traditional documents, such as certificates issued by an adl or other documents certified by a cadi of long standing.

17. An individual applying to participate in the referendum under the fourth criterion will have to prove his paternal relationship and identity on the basis of official documents issued by the government authorities of his country of birth or current residence, taking into account the conditions and procedures provided for in paragraph 19 below. It is understood that the applicant will need to prove at the outset that his father was born in the Territory and, to

that end, supply documents issued by the former Spanish Territorial authorities in accordance with paragraphs 9 and 15 and taking into account the provisions of paragraph 16.

Official documents

18. Documents issued by the government authorities referred to in paragraphs 15 and 17, such as passports, identity cards, family record books, birth, marriage and death certificates and residency permits, will be accepted as official identity or other documents in support of individual applications to participate in the referendum.

19. It will be for the Identification Commission to determine the admissibility of supporting documents. It will also fall to the Commission to verify the authenticity of such documents and the accuracy of the information therein. To that end the Commission may have recourse to expert assistance, in accordance with regulation 12 of the General Regulations.

Oral testimony

20. Only sheikhs of the Saharan subfractions included in the 1974 census will be eligible to testify before the Identification Commission in support of individual applications to participate in the referendum. They will testify on every application, solemnly swearing to tell the whole truth and nothing but the truth.

21. The sheikhs referred to in the above paragraph largely comprise (a) the old sheikhs elected in 1973 or (b), in accordance with Saharan tradition, the eldest son in the event of the death or incapacity of any of those sheikhs. The Identification Commission will make use of the services of other notables from the Saharan subfraction included in the 1974 census if circumstances so require, for example, if the subfraction included in the 1974 census is geographically dispersed.

22. In any event the sheikhs of the subfraction to which the applicant belongs will need to attest to his identity before the Identification Commission. In the cases provided for paragraph 16, they will also be called upon to testify before the Commission to help it to determine the eligibility of the applicant to vote in the referendum.

23. Small subfractions, where necessary, will be combined into fractions. The Identification Commission will then call on sheikhs at the fraction level.

III. REVIEW OF INDIVIDUAL APPLICATIONS TO PARTICIPATE IN THE REFERENDUM

24. Paragraph 21 of document S/22464 provides, inter alia, that the Identification Commission, assisted by the tribal chiefs and in the presence of observers from the Organization of African Unity and the parties, will meet in

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New York or Geneva to review individual applications to participate in the referendum.

25. Given that the Identification Commission must verify all supporting evidence so as to be able to decide on individual applications, the Commission, rather than meeting in New York or Geneva, should take the necessary measures in the mission area, with the assistance of tribal chiefs and in the presence of observers of the two parties and of Organization of African Unity. The Commission will then determine an applicant's eligibility to vote on submission and verification of the requisite supporting evidence.

IV. GENERAL OBSERVATIONS

26. The interpretation given here of the criteria and procedures for verification represent a compromise which, while taking into account the positions of the two parties, inevitably fails to conform to all their views or meet all their concerns. In this connection it should be noted that the aim of the interpretation of the criteria and procedures for identification given here is not to seek to define a "Saharan nationality" but to establish free of any bias a Saharan electorate which may determine the future of the Territory of Western Sahara, while allowing the United Nations to organize and supervise the referendum in a balanced and equitable manner in accordance with the peace plan.

27. Owing to the difficulties inherent in the identification of voters belonging to a nomadic tribal society extending over several countries of the region and beyond, the procedures regarding supporting evidence have been the subject of particular scrutiny in order to monitor as far as possible the identity and eligibility to vote of individuals applying to participate in the referendum.

28. Recourse procedures will be established, in accordance with paragraph 23 (b), of document S/22464 and regulation 15 of the General Regulations.

Annex II

[Original: French]

Terms of reference of the Identification Commission

The Secretary-General of the United Nations,

In view of paragraphs 24 to 30 and 60 to 62 and paragraphs 19 to 24 respectively of reports S/21360 and S/22464 approved by the Security Council,

In view of regulation 11 of the General Regulations issued by the Secretary-General on 8 November 1991,

Hereby issues the following provisions concerning the terms of reference of the Identification Commission:

CHAPTER I. GENERAL PROVISIONS

Article 1. The Identification Commission shall be responsible for establishing the final list of Saharans qualified to participate in the voting during the referendum on self-determination for the people of Western Sahara, taking into account the modalities provided for in paragraphs 24 to 30 and 60 to 62 of report S/21360 and in paragraphs 19 to 24 of report S/22464.

Article 2. In carrying out its terms of reference, the Identification Commission shall follow the directives and instructions of the Special Representative of the Secretary-General for Western Sahara who, acting under the authority and, as required, on the instructions of the Secretary-General, shall be solely responsible for all questions relating to the organization and supervision of the referendum, in accordance with the settlement plan.

Article 3. In the performance of its functions, concerning identification, registration and appeals, the Identification Commission shall be composed of:

The field offices of the Identification Commission,

The central Identification Commission.

Article 4. The field offices shall be responsible for the identification and registration of voters and for the processing of appeals, in accordance with chapters III and IV of these terms of reference.

The field offices shall be opened before the publication of the list referred to in article 10 below. The field offices shall consist of the head of the office and assessors, whose number shall be established by the Chairman of the Identification Commission, in agreement with the Special Representative. The field offices shall appoint, from among their members, an instructor and a rapporteur.

Article 5. The central Identification Commission shall be responsible for taking a final decision on appeals. It may establish subcommissions to assist it for that purpose. Those responsible for taking a decision against which an appeal has been lodged shall not be entitled to rule on the appeal.

Article 6. The field offices and the central Identification Commission shall take their decisions as soon as possible.

CHAPTER II. UPDATING OF THE 1974 CENSUS

Article 7. During the first stage of its work, the Identification Commission shall update the 1974 census, with the assistance of the tribal chiefs of Western Sahara and in the presence of observers from the Organization of African Unity and the parties, taking into account the modalities provided for in paragraphs 20 and 21 of report S/22464. It shall update the 1974 census list:

(a) By removing from that census list the names of persons who have since died;

(b) By considering applications from persons who claim the right to participate in the referendum on the grounds that they are Saharans and were omitted from the 1974 census.

Article 8. After making the required revisions to the 1974 list in accordance with article 7 (a), the Identification Commission, with the approval of the Special Representative, shall publish the revised list, both within Western Sahara and outside, in places where numbers of Saharans are living. At the same time, it shall also publish instructions on how individual Saharans can apply, in writing, before the deadline for registration to be established by the Special Representative, for inclusion in that list on the grounds that they were omitted from the 1974 census.

Article 9. The Identification Commission shall review the aforementioned applications under the supervision of the Special Representative, taking into account the procedures provided for in particular in paragraph 21 of report S/22464.

Article 10. On completing that review, the Identification Commission shall publish, through the Special Representative and following clearance by the Secretary-General of the United Nations, a consolidated list of the persons who have been judged eligible to vote on the basis of the revised 1974 census and the applications received, both within the Territory and outside, in places where numbers of Saharans are living.

CHAPTER III. IDENTIFICATION OF PERSONS QUALIFIED TO PARTICIPATE IN THE REFERENDUM AND ISSUANCE OF VOTERS' CARDS

Article 11. During the second stage of its work, the Identification Commission shall be responsible, with the assistance of the tribal chiefs of Western Sahara, for:

(a) Identifying the persons qualified to vote whose names are on the list referred to in article 10 of these terms of reference and, upon presentation and verification of the evidence required in accordance with article 12, issuing voters' cards to them;

(b) Establishing and organizing procedures for appeals against non-inclusion in the list referred to in article 10 or against decisions taken under paragraph (a) above.

Article 12. The identification of persons qualified to vote whose names are on the list published pursuant to article 10 shall take place at the field office closest to the place where the person concerned normally lives; the latter shall submit an application for a voter's card, accompanied by evidence establishing his identity and his eligibility to vote. The field office shall verify the evidence provided by the person concerned, and, having established his identity and confirmed his eligibility to vote, shall automatically issue to him a voter's card.

Article 13. Any person who is refused a voter's card shall be informed of the grounds for that refusal and of his right to lodge an objection appeal under article 15 (b) below.

Article 14. Each field office shall establish and publish the list of persons to whom it has issued a voter's card. The list shall be dated and signed by the head of the office.

CHAPTER IV. APPEALS

Article 15. Appeals may be lodged:

(a) By persons whose names are not included in the list published in accordance with article 10 above;

(b) By persons whose identity has not been conclusively established in accordance with article 12 and who have therefore been refused a voter's card;

(c) Against decisions concerning the issuance of voters' cards, by any person who can provide sufficient evidence and is on the list published pursuant to article 14.

Article 16. The decisions on appeals taken by the Identification Commission shall be communicated individually and in writing to the persons concerned. These decisions shall be final and not subject to appeal.

A. Appeals against non-inclusion

Article 17. The appeals against non-inclusion referred to in article 15 (a) shall be lodged with the field office closest to the place where the appellant normally lives, within a time-limit not exceeding 15 days following the date of publication of the list provided for in article 10 above.

Article 18. The appeal shall be submitted in writing and shall set out the grounds on which it is based. The appellant shall mention all the new circumstances or facts which might lead to a reconsideration of his case, accompanied by appropriate evidence.

Article 19. The field office shall be responsible for examining the file and verifying the evidence. It shall establish a file in which shall be placed, in particular, statements by tribal chiefs of Western Sahara concerning any validly established facts proving the right of the person concerned to participate in the referendum.

In the light of the evidence available to it, the field office shall recommend that the appeal be allowed or dismissed and shall transmit the file to the central Identification Commission.

Article 20. The central Identification Commission shall take a final decision on the appeal. It may request additional information. If the appeal is allowed, the name of the person concerned shall be added to the list provided for in article 10 above. The field office referred to in article 17 shall then identify the person concerned and issue to him a voter's card in accordance with articles 12 and 13. If the appeal is dismissed, the file shall be closed without further legal effect.

B. Objection appeals

Article 21. The objection appeals referred to in article 15 (b) shall be lodged with the field office which refused to issue a voter's card to the person concerned, within 15 days following the refusal.

Article 22. The appeal shall be submitted in writing and shall set out the grounds on which it is based. The appellant shall mention all the new circumstances or facts which might lead to a reconsideration of his case, accompanied by appropriate evidence. The field office referred to in article 21 shall follow the same procedure as that described in article 19.

Article 23. The central Identification Commission shall take a final decision on the appeal. It may request additional information. If the objection is allowed, the field office referred to in article 21 shall automatically issue a voter's card to the appellant and shall add him to the list provided for in article 14. The issuance of the voter's card to the appellant shall not be subject to subsequent challenge under article 15 (c). If the objection is dismissed, the file shall be closed without further legal effect.

C. Appeals challenging the issuance of voters' cards

Article 24. The appeals challenging the issuance of voters' cards referred to in article 15 (c) shall be lodged with the field office which issued the cards, within a time-limit not exceeding 15 days following the publication of the list provided for in article 14.

Article 25. The appeal shall be submitted in writing and shall set out the grounds on which it is based. The appellant shall mention all factors which might lead to a reconsideration of the issuance of a voter's card to a particular individual. The field office referred to in article 24 shall follow the same procedure as that described in article 19.

Article 26. The central Identification Commission shall take a final decision on such appeals. It shall notify the person concerned that an appeal has been lodged challenging the issuance of his voter's card and shall request him to provide additional information. If the appeal is allowed, the name of the voter concerned shall be deleted from the voters list referred to in article 14, the person concerned shall be duly notified and the voter's card shall be cancelled. If the appeal is dismissed, the file shall be closed without further legal effect.

CHAPTER V. FINAL PROVISIONS

Article 27. The central Identification Commission shall record the results of its work in a report addressed to the Special Representative. The consolidated list of voters established and signed by the central Identification Commission shall be annexed to the report.

Article 28. The Special Representative shall submit the list referred to in article 27 to the Secretary-General of the United Nations for examination, in consultation with the President in office of the Organization of African Unity. The final voters list shall be published by the Special Representative as soon as the Secretary-General has given his authorization.

Article 29. The Identification Commission shall determine the administrative and technical procedures necessary for the implementation of these terms of reference, in accordance with the settlement plan and regulation 15 of the General Regulations.

Done in New York on 26 April 1993

(Signed) Boutros BOUTROS-GHALI

Annex III

[Original: French]

General Regulations for the Organization and Conduct of
the Referendum in Western Sahara

The Secretary-General of the United Nations,

In view of resolution 658 (1990), by which the Security Council approved the report of the Secretary-General of the United Nations on the situation concerning Western Sahara (S/21360),

In view of resolution 690 (1991), by which the Security Council approved the report of the Secretary-General (S/22464) and decided to establish, under its authority, a United Nations Mission for the Referendum in Western Sahara,

In view of paragraph 58 of the aforementioned report of the Secretary-General (S/21360),

In view of paragraph 9 of the aforementioned report of the Secretary-General (S/22464),

Hereby issues the Regulations provided for in the aforementioned texts with a view to the organization, supervision and conduct of the referendum.

CHAPTER I. GENERAL PROVISIONS

Regulation 1. These Regulations shall be interpreted in accordance with the relevant provisions of reports S/21360 and S/22464 of the Secretary-General of the United Nations.

Regulation 2. The term "mission area" means the Territory of Western Sahara and the designated locations in neighbouring countries in which the United Nations Mission for the Referendum in Western Sahara performs any of its functions.

The term "Territory" means the Territory of Western Sahara.

The term "voters list" means the list of persons qualified to vote in the referendum.

The term "settlement plan" refers to the two reports approved by the Security Council mentioned in regulation 1.

Regulation 3. These Regulations shall be called "General Regulations for the Organization and conduct of the Referendum in Western Sahara".

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Regulation 4. The referendum shall be organized and conducted in accordance with the following principles:

The referendums shall enable persons duly identified and qualified to vote by the Identification Commission to choose between independence and integration with Morocco;

The referendum shall be held in the Territory;

The referendum shall be free and equitable;

All Saharans who are aged 18 years or older on the closing date for inclusion in the voters list and who have been identified and qualified to vote by the Identification Commission may participate in the referendum;

The referendum shall be held in accordance with the principles of universal free and equitable suffrage, by secret ballot and by a simple majority of valid votes cast.

CHAPTER II. THE SPECIAL REPRESENTATIVE

Regulation 5. The Special Representative of the Secretary-General of the United Nations shall be the sole authority responsible, under the direction of the Secretary-General of the United Nations, for the organization and supervision of the referendum, in accordance with the principles set forth in regulation 4 of these General Regulations and in application of the settlement plan.

Regulation 6. In the performance of his task, the Special Representative shall be assisted by a support group called the "United Nations Mission for the Referendum in Western Sahara" (MINURSO).

Regulation 7. Under the authority of the Special Representative, the United Nations Mission for the referendum in Western Sahara shall consist of:

The Deputy Special Representative

The agents and officials of the Civilian, Military and Security Units

The Identification Commission

The Referendum Commission

Regulation 8. In the performance of his functions, the Special Representative shall have the authority, in accordance with the settlement plan, to issue rules and instructions consistent with these Regulations in order to give detailed effect to the plan. The regulations, rules and instructions shall, in the event of any incompatibility, prevail over existing laws or measures in force in the Territory. These rules and instructions shall be communicated to the parties, as required, and shall also be given appropriate publicity in the Territory and, if necessary, in the mission area.

Regulation 9. The decisions and measures referred to in regulation 8 shall concern in particular:

The deadline for inclusion in the voters list, after which no application for inclusion will be accepted, in accordance with the provisions of the settlement plan;

The starting date, conduct and closing date of the referendum campaign;

Freedom of movement, assembly and speech during the referendum campaign;

The regulation, date and material organization of the voting (hours, days, polling stations, ballot forms, etc.);

The procedures for receiving and examining complaints and appeals;

The proclamation of the results.

With a view to ensuring that the provision he is led to adopt in the performance of his functions, as set forth in the plan, are respected, maintaining law and order and ensuring the probity of the voting, the Special Representative may call on the Security Unit or, if appropriate, the Military Unit placed under his authority.

Regulation 10. In accordance with the settlement plan, the Special Representative shall take the necessary measures in order to:

(a) Give effect to the principle that the referendum is placed under the responsibility of the United Nations.

To that end, the Special Representative shall, before the beginning of the referendum campaign, ensure that the authorities involved suspend any law or measure which, in his judgement, could obstruct the conduct of a free and fair referendum and which would not otherwise be superseded by the regulations, rules and instructions referred to in regulation 8 above.

(b) Ensure the liberation of political prisoners or detainees with a view to their participation in the referendum, in accordance with the settlement plan, and the proclamation of an amnesty for such prisoners and detainees.

(c) Ensure the exchange of prisoners of war, in accordance with the settlement plan.

(d) Draw up a code of conduct that will govern the behaviour of the parties and their supporters during the referendum campaign.

(e) Ensure the repatriation of the Territory of refugees or other Saharans qualified to participate in the referendum, together with members of their immediate families, in accordance with the programme envisaged in the settlement plan, after they have been granted a general and complete amnesty.

CHAPTER III. IDENTIFICATION COMMISSION AND ESTABLISHMENT
OF THE VOTERS LIST

Regulation 11. An Identification Commission shall be set up in accordance with the relevant provisions of the settlement plan. It shall be responsible for establishing the final list of Saharans qualified to participate in the voting.

The Secretary-General shall appoint the members, Chairman, Deputy Chairman and Vice-Chairmen of the Identification Commission and shall establish its terms of reference.

Regulation 12. In order to perform its function, the Identification Commission shall have the authority, in particular:

To establish subcommissions, where necessary;

To organize mobile or fixed identification and registration teams;

To call upon the assistance of any expert or adviser who can help it in its work.

Regulation 13. In accordance with the relevant provisions of the settlement plan, all Saharans duly identified by the Identification Commission and aged 18 years or over on the closing date for inclusion in the voters list shall be qualified for inclusion in that list. The Special Representative shall establish the deadline for inclusion in the list.

Regulation 14. The Identification Commission, with the assistance of the tribal chiefs and using all means of verification that it deems useful, shall examine the cases of all Saharans aged 18 years on the closing date for inclusion in the voters list who, in accordance with the relevant provisions of the settlement plan, not having been included in the revised list submit individual applications for inclusion in the voters list before the closing date for such inclusion.

Regulation 15. The Identification Commission shall draw up and issue through the Special Representative instructions concerning:

1. The Commission's operating procedures;
2. The consideration of individual applications to participate in the referendum;
3. The formalities for the identification and registration of voters;
4. Appeals procedures.

These instructions shall take effect as soon as they are published by the Special Representative.

Regulation 16. The Identification Commission shall issue to every person accepted for inclusion in the voters list a numbered voting card, in accordance with the rules established by the Special Representative. It shall make public the final voters list duly authorized by the Secretary-General of the United Nations, and shall have it publicly displayed by arrangement with the Special Representative.

Regulation 17. The Identification Commission may draw up rules of procedure to facilitate its work.

Regulation 18. The Identification Commission may hold open meetings, limited participation meetings or closed meetings according to the nature of the questions under consideration.

Regulation 19. The Identification Commission may invite, in accordance with the settlement plan, the parties or the observers to attend its open or limited participation meetings within the limit of a number to be established by the Special Representative.

CHAPTER IV. REFERENDUM COMMISSION

Regulation 20. A Referendum Commission shall be set up in accordance with the relevant provisions of the settlement plan and shall give its opinion on, draw the attention of the Special Representative to, make recommendations concerning and have the authority to establish any rules and instructions on questions relating to:

The organization and regulation of the referendum campaign;

The organization and proper conduct of the referendum until the results are proclaimed by the Special Representative, in accordance with the settlement plan and these General Regulations.

The rules and instructions of the Referendum Commission shall, where appropriate, be published by the Special Representative.

Regulation 21. The Referendum Commission shall examine the complaints and appeals submitted to it and propose to the Special Representative such means of settlement as it deems useful.

Regulation 22. The Referendum Commission shall establish the deadline beyond which no appeal shall be receivable.

Regulation 23. The Secretary-General shall appoint the members, Chairman, Deputy Chairman and Vice-Chairmen of the Referendum Commission and shall establish its terms of reference.

Regulation 24. Regulations 17, 18 and 19 of these Regulations shall be applicable to the Referendum Commission.

CHAPTER V. FINAL PROVISIONS

Regulation 25. The rules and decisions of the Special Representative, the instructions of the Identification Commission and the opinions, recommendations and instructions of the Referendum Commission shall conform to these General Regulations.

Regulation 26. Any serious implementation difficulty or divergence of views concerning the interpretation of the settlement plan or these General Regulations that may arise between the authorities of the United Nations Mission for the Referendum in Western Sahara and the parties or one of the parties shall be settled by the Secretary-General of the United Nations, after recourse to the Special Representative.

Regulation 27. These General Regulations shall enter into force as soon as they are communicated to the parties. They shall cease to have effect after the proclamation of the referendum results.

Regulation 28. The Secretary-General of the United Nations may amend the General Regulations or abrogate, where appropriate, some of their provisions.

Done at New York on 8 November 1991

(Signed) Javier PEREZ DE CUELLAR
